

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE DEPARTMENT OF DEFENSE
OF THE UNITED STATES OF AMERICA
AND
THE DEPARTMENT OF DEFENCE
OF AUSTRALIA
FOR
TEST AND EVALUATION PROGRAM (TEP) COOPERATION
(SHORT TITLE: TEP MOU)
DATE: 23 April 2003

I hereby certify that the attached is a true copy of the original MOU.

F.D. Kenlon 5/13/03

Frank Kenlon
Assistant Director
International Agreements and
Cooperative Program Policy

AT+L / IC / P+A

BACKGROUND STATEMENT FOR INTERNATIONAL AGREEMENT

1. TYPE OF AGREEMENT: Bilateral Cooperative Framework Agreement
2. FOREIGN COUNTRY INVOLVED: Australia
3. U.S. AND FOREIGN GOVERNMENTAL AGENCIES RESPONSIBLE FOR CARRYING OUT THE AGREEMENT:
 - a. FOR THE U.S.: Department of Defense
 - b. FOR FRANCE: Department of Defence of Australia
4. FULL TITLE: Memorandum of Understanding Between the Department of Defense of the United States of America and the Department of Defence of Australia for Test and Evaluation Program (TEP) Cooperation (Short Title: TEP MOU)
5. BRIEF SUMMARY OF AGREEMENT: The MOU will establish a framework for U.S.-Australian efforts over the next 15 years. Individual projects will be conducted through TEP Project Agreements (PAs) or Equipment Transfer (ET) Forms. Reciprocal Use of Test Facilities (RUTF) PAs will be established for performance of T&E services between the performing Participant and the customer Participant. Cooperative Test & Evaluation (CTE) PAs will be established for efforts such as cooperative development of proving ground techniques, procedures, test standards and criteria and joint development of instrumentation and test equipment. ET Forms will be established for transfers of instrumentation and test equipment for cooperative T&E purposes.
6. STATEMENT OF LEGAL AUTHORITY: The principal legal authority for the TEP Agreement is 10 U.S.C., Section 2350(i), "Cooperative Agreements with Foreign Countries and International Organizations for Reciprocal Use of Test Facilities." 10 U.S.C. Sections 2350a, 2350i and 2350b also apply. Other legal authorities which may apply are Section 27 of the Arms Export Control Act (AECA) (22 U.S.C. Section 2767) and 22 U.S.C. Section 2796d (Section 65 loans). This Agreement was certified to Congress under Section 27. Individual PAs generated under this Agreement which require Section 27 legal authority will also be certified to Congress. Delegations of authority to negotiate and approve PAs and loan agreements will be made in accordance with DoD 5000.2R.
7. DATE OF ENTRY INTO FORCE: 23 April 2003
8. DATE OF TERMINATION: 22 April 2018
9. SIGNING OFFICIALS
 - a. FOR THE U.S.: Honorable Thomas P. Christie, Director, Operational Test and Evaluation
 - b. FOR FRANCE: Vice Admiral Russ Shalders, Vice Chief of the Defence Force
10. DATE OF SIGNATURE OF AGREEMENT
 - a. FOR THE U.S.: 14 April 2003
 - b. FOR FRANCE: 23 April 2003

TABLE OF CONTENTS

INTRODUCTION	4
SECTION I	
DEFINITIONS	5
SECTION II	
OBJECTIVES	9
SECTION III	
SCOPE OF WORK	10
SECTION IV	
MANAGEMENT (ORGANIZATION AND RESPONSIBILITY)	13
SECTION V	
FINANCIAL PROVISIONS	17
SECTION VI	
CONTRACTING PROVISIONS	20
SECTION VII	
PROJECT EQUIPMENT TRANSFERS	22
SECTION VIII	
DISCLOSURE AND USE OF PROJECT INFORMATION	25
SECTION IX	
CONTROLLED UNCLASSIFIED INFORMATION	30
SECTION X	
VISITS TO ESTABLISHMENTS	31
SECTION XI	
SECURITY	32
SECTION XII	
THIRD PARTY SALES AND TRANSFERS	35
SECTION XIII	
LIABILITY AND CLAIMS	37
SECTION XIV	
CUSTOMS DUTIES, TAXES, AND SIMILAR CHARGES	39
SECTION XV	
SETTLEMENT OF DISPUTES	40
SECTION XVI	
GENERAL PROVISIONS	41
SECTION XVII	
AMENDMENT, TERMINATION, ENTRY INTO EFFECT, AND DURATION ..	42
ANNEX A	
MODEL RECIPROCAL USE OF TEST FACILITIES (RUTF) PROJECT ARRANGEMENT (PA)	A-1
APPENDIX 1 -- COST ESTIMATE MODEL	A-8
APPENDIX 2 -- INVENTORY OF PROJECT EQUIPMENT TRANSFERS ..	A-10
ANNEX B	
MODEL COOPERATIVE TEST & EVALUATION (CTE) PROJECT ARRANGEMENT (PA)	B-1
APPENDIX 1 -- COOPERATIVE PROJECT PERSONNEL	B-11

APPENDIX 2 - INVENTORY OF PROJECT EQUIPMENT TRANSFERS . . .	B-15
ANNEX C	
MODEL PROJECT EQUIPMENT TRANSFER (PET) FORM	C-1

INTRODUCTION

The Department of Defense of the United States of America (U.S. DoD) and the Department of Defence of Australia (AS DoD), hereinafter referred to as the "Participants":

Recognizing the Exchange of Notes constituting an Agreement between the Government of the United States of America and the Government of Australia Concerning Certain Mutual Defense Commitments done at Sydney on December 1, 1995 (Chapeau Agreement) applies to Test and Evaluation Activities under this MOU, including Project Arrangements for the Reciprocal Use of Test Facilities;

Having a common interest in defense;

Recognizing the benefits to be obtained from standardization, rationalization, and interoperability of military equipments;

Desiring to improve their mutual conventional defense capabilities through the application of emerging technology;

Having a mutual need to engage in a broad range of cooperative or reciprocal Test and Evaluation (T&E) Activities to satisfy common operational requirements;

Having independently conducted testing of the applications of various technologies, and having recognized the benefits of cooperation in the T&E arena;

Have reached the following understandings:

SECTION I

DEFINITIONS

The Participants have jointly decided upon the following definitions for terms used in this MOU:

Classified Information	Official information that requires protection in the interests of national security and is so designated by the application of a security classification marking. This information may be in oral, visual, magnetic or documentary form or in the form of equipment or technology.
Computer Data Base	A collection of data recorded in a form capable of being processed by a computer. This definition does not include Computer Software.
Computer Program	A set of instructions, rules, or routines recorded in a form that is capable of causing a computer to perform a specific operation or series of operations.
Computer Software	Computer Programs, source code, source code listings, design details, algorithms, processes, flow charts, formulae, and related materials that would enable the software to be reproduced, recreated, or recompiled. Computer Software does not include Computer Data Bases or Computer Software Documentation.
Computer Software Documentation	Owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the Computer Software or provide instructions for using the Computer Software.
Contract	Any mutually binding legal relationship under national laws which obligates a Contractor to furnish supplies or services, and obligates one or both of the Participants to pay for them.
Contracting	The obtaining of supplies or services by Contract from sources outside the government organizations of the Participants. Contracting includes description (but not determination) of supplies and services required, solicitation and selection of sources, preparation and award of Contracts, and all phases of Contract administration.
Contracting Agency	The entity within the government organization of a Participant, which has authority to enter into, administer, or terminate Contracts.

Contracting Officer	A person representing a Contracting Agency of a Participant who has the authority to enter into, administer, or terminate Contracts.
Contractor	Any entity awarded a Contract by a Participant's Contracting Agency.
Controlled Unclassified Information	Unclassified information to which access or distribution limitations have been applied in accordance with applicable national laws or regulations. Whether the information is provided or generated under this MOU, the information will be marked to identify its "in confidence" nature. It could include information that has been declassified, but remains controlled.
Cooperative Project Personnel (CPP)	Military members or civilian employees of a Participant assigned under a specific Project Arrangement (PA) who perform <i>managerial, engineering, technical, administrative, Contracting, logistics, financial, planning</i> or other functions in furtherance of a Cooperative Test and Evaluation Project Arrangement.
Cooperative Test & Evaluation (CTE) Project Arrangement (PA)	An implementing arrangement, under this MOU that specifies the provisions for cooperation on a specific TEP Activity.
Customer Participant	The Participant on whose behalf a test effort is conducted at a Test Facility of the Performing Participant.
Defense Purposes	Manufacture or other use in any part of the world by or for the armed forces of either Participant.
Designated Security Authority (DSA)	The security office approved by national authorities to be responsible for the security aspects of this MOU.
Direct Cost	Any item of cost that is easily and readily identified to a specific unit of work or output within the Test Facility where the use occurred, that would not have been incurred if such use had not occurred; may include costs of labor, materials, facilities, utilities, equipment, supplies, and any other resources of the Test Facility that are consumed or damaged in connection with the use or the maintenance of the Test Facility for the purposes of the use.
Financial Costs	Any costs that, due to their nature, will be paid using monetary contributions from the Participants.
Host Participant	The Participant to which Cooperative Project Personnel are

assigned for duty pursuant to a CTE PA.

Indirect Cost	Any item of cost that is not easily and readily identified to a specific unit of work or output within the Test Facility where the use occurred; may include general and administrative expenses for such activities as supporting base operations, manufacturing, supervision, procurement of office supplies, and utilities that are accumulated costs allocated among several users.
Jointly Generated Foreground Information	Information jointly generated by the Participants in the performance of a TEP Activity.
Non-financial Costs	Any costs that, due to their nature, will be met using non-monetary contributions from the Participants.
Parent Participant	The Participant to which Cooperative Project Personnel belong.
Patent	Legal protection of the right to exclude others from making, using, or selling an invention. The term refers to any and all Patents including, but not limited to, Patents of implementation, improvement or addition, petty Patents, utility models, appearance design Patents, registered designs, and inventor certificates or like statutory protection as well as divisions, reissues, continuations, renewals, and extensions of any of these.
Performing Participant	The Participant conducting a test effort at its Test Facilities on behalf of the Customer Participant.
Project Background Information	Information not generated in the performance of a TEP Activity.
Project Equipment	Any test articles, material, equipment, end item, subsystem, component, special tooling or test equipment jointly acquired or provided for use in a TEP PA or a Project Equipment Transfer.
Project Foreground Information	Information generated in the performance of a TEP Activity.
Project Information	Any information provided to, generated in, or used in a TEP Activity under this MOU regardless of form or type and whether or not subject to copyright, Patent or other legal protection.
Project Invention	Any invention or discovery formulated or made (conceived or "first actually reduced to practice") in the course of work performed under a PA. The term "first actually reduced to practice" means the first demonstration, sufficient to establish to

one skilled in the art to which the invention pertains, of the operability of an invention for its intended purpose and in its intended environment.

Reciprocal Use of Test Facilities (RUTF) PA	An implementing arrangement under this MOU that specifies the cost, schedule and performance aspects of a test effort conducted by the Performing Participant's test facility for the Customer Participant.
TEP	Australia-U.S. Test & Evaluation Program.
TEP Activity	Any activity in support of information exchange, Working Groups, Project Arrangements and PETs, as specified in Section III (Scope of Work) of this MOU.
TEP Project Arrangement	An implementing arrangement under this MOU that can be either a Reciprocal Use of Test Facilities (RUTF) PA or a Cooperative Test & Evaluation (CTE) PA.
Test and Evaluation (T&E)	The overall process of data taking, data reduction and the analysis of that data for a specific purpose or application.
Test Facility	Range or other facility at which testing of defense equipment may be accomplished.
Third Party	A government other than the government of a Participant and any person or other entity whose government is not the government of a Participant.
Working Group	Any group authorized to conduct TEP-related T&E activities by the Management Agents (MAs), in accordance with Section III (Scope of Work) and Section IV (Management.)

SECTION II

OBJECTIVES

2.1 This MOU establishes a comprehensive framework for implementing a program of cooperation on mutually determined topics related to defense Test & Evaluation (T&E). Specific objectives of this MOU are:

- 2.1.1 to share test resources through reciprocal and cooperative use of Test Facilities, ranges and other test capabilities and testing tools;
- 2.1.2 to provide for the conduct of cooperative test and evaluation of systems of shared interest;
- 2.1.3 to conduct joint T&E-related tests and experiments to advance test technologies and procedures;
- 2.1.4 to conduct cooperative development of test capabilities, test procedures and methods, and test standards and criteria;
- 2.1.5 to exchange testing related information such as test capability specifications, test criteria, standards, procedures, lessons learned and certain test data;
- 2.1.6 to provide for the transfer of test technologies and procedures; and
- 2.1.7 to maximize the effective utilization of each Participant's Test Facilities.

2.2 The Participants intend to use their best efforts to accommodate testing requirements of the other Participant. However, each Participant has the right to refuse to conduct a proposed TEP Activity in its country if, for example, it determines that the proposed TEP Activity:

- 2.2.1 does not fall within its national security interests;
- 2.2.2 is not permitted by international treaties or protocols to which either Participant's Government is a party;
- 2.2.3 cannot be accommodated within the test program resources of the Performing Participant;
- 2.2.4 cannot be conducted within constraints set by any national, state or local environmental laws or ordinances; or
- 2.2.5 would pose an unacceptable risk to life or property.

SECTION III

SCOPE OF WORK

3.1 The scope of work for this MOU will include the following TEP Activities:

3.1.1 accommodation of testing requirements on a customer-reimbursable basis under the provisions of a Reciprocal Use of Test Facilities Project Arrangement (RUTF PA). This may include access to, or transfer of, test instrumentation and other testing tools. This may also include the conduct of joint tests where both Participants have an interest;

3.1.2 conduct of cooperative T&E on systems of shared interest;

3.1.3 conduct of joint tests and experiments to advance the state of the art of test technology;

3.1.4 cooperative development of new or existing test instrumentation, equipment, facilities, and other testing tools;

3.1.5 cooperative development of testing criteria, standards and procedures;

3.1.6 exchange of information on T&E policy, testing criteria, standards and procedures and other test-related or test-derived information including, but not limited to, doctrine, tactics and operational requirements related to TEP;

3.1.7 transfer of test technologies and procedures;

3.1.8 familiarization with each other's facilities and identification of potential cooperative T&E opportunities; and

3.1.9 assignment of personnel between the Participants to facilitate development of test capabilities and to assist with the conduct of T&E efforts.

3.2 The following mechanisms will be utilized to undertake the TEP Activities described in paragraph 3.1:

3.2.1 Information Exchange:

3.2.1.1 Information exchange will take place on an equitable basis in all areas concerning TEP. This MOU permits the exchange of Computer Data Bases, Computer Software and Computer Software Documentation as information. This MOU permits the exchange of information for any purpose under the scope of this MOU, including harmonizing the Participants' respective TEP requirements and for formulating, developing, and negotiating any TEP Activity. Information

exchange need not necessarily coincide in time, technical field, or in the form of information.

3.2.1.2 Computer Data Bases, Computer Software or Computer Software Documentation associated with TEP Activities may be transferred under this MOU in accordance with national procedures, subject to the following limitations:

3.2.1.2.1 such transfers must be necessary or useful to the conduct of the TEP Activity as determined by the providing Participant; and

3.2.1.2.2 such transfers may occur only where national authority for such release has been obtained by the providing Participant. Such release may be subject to restrictions on use imposed by the providing Participant.

3.2.2 Working Groups (WGs):

3.2.2.1 WGs may be established to explore, study, and report on specific T&E issues. A WG will be limited in scope to a single, well-defined area and will endeavor to assess the T&E issue based on information provided by both Participants in such a way as to arrive at a jointly determined position within a set time limit. Each WG will have its own written terms of reference (TORs).

3.2.3 TEP Project Arrangements (PAs):

3.2.3.1 Reciprocal Use of Test Facilities (RUTF) PA: This type of PA will include specific provisions, consistent with this MOU and the model at Annex A, that specify the Performing and Customer Participants' responsibilities concerning the objectives, scope of work, estimated test schedule, management structure, financial provisions, Project Equipment Transfers (PETs) (if required), special disclosure and use of information provisions (optional), security classification for the PA and other special provisions as required. An Approval-In-Principle (AIP) will be required prior to negotiating a RUTF PA.

3.2.3.2 Cooperative T&E (CTE) PA: This type of PA will include specific provisions, consistent with this MOU and the model at Annex B, concerning the objectives, scope of work, sharing of work, management structure, financial provisions (if required), contractual provisions (if required), PETs (if required), special disclosure and use of information provisions (optional), security classification for the applicable PA and other special provisions as required.

3.2.3.3 The Participants recognize that there may be instances where a project contains elements including cooperative effort as well as the reciprocal use of

Test Facilities. Such projects will be treated as cooperative projects. Equitability will be required in all such projects.

3.2.4 Project Equipment Transfer:

3.2.4.1 The Participants recognize that it may be necessary to transfer Project Equipment for the purpose of implementing this MOU but not for the purposes of a specific TEP PA. In such cases, the Participants may conclude PETs consistent with the model at Annex C.

3.2.5 Familiarization Visits:

3.2.5.1 Familiarization visits may occur, in accordance with Section X (Visits to Establishments) to promote awareness of each other's facilities and to identify potential cooperative T&E opportunities.

3.3 Acquisition or production programs that may evolve from cooperation under one or more PAs under this MOU are outside the scope of this MOU and require conclusion of separate arrangements.

SECTION IV

MANAGEMENT (ORGANIZATION AND RESPONSIBILITY)

4.1 The Director, Operational Test & Evaluation (DOT&E), Office of the Secretary of Defense (or his/her successor in the event of reorganization) is designated U.S. MOU Director (U.S. MD). The First Assistant Secretary Science Policy (FASSP)(or his/her successor in the event of reorganization) is designated the AS MOU Director (AS MD). The MDs will be responsible for:

- 4.1.1 monitoring implementation of this MOU and exercising executive-level oversight;
- 4.1.2 monitoring the overall use and effectiveness of the MOU;
- 4.1.3 recommending amendments to this MOU to the Participants;
- 4.1.4 resolving issues brought forth by the Management Agents; and
- 4.1.5 approving PAs pursuant to paragraph 3.2.3 and the Participants' respective national procedures.

4.2 The Deputy Director, Resources and Ranges (DOT&E) (or his/her successor in the event of reorganization or his/her designee), is designated U.S. Management Agent (U.S. MA) for the MOU. The Director Trials (DTRIALS)(or his/her successor in the event of reorganization or his/her designee) is designated AS Management Agent (AS MA). The MAs will be responsible for:

- 4.2.1 monitoring and evaluating the work conducted under each TEP Activity and providing guidance and direction as necessary;
- 4.2.2 designating points of contact (POCs) and exercising overall supervision for information exchanges pursuant to paragraph 3.2.1;
- 4.2.3 approving the formation of WGs and their TORs pursuant to paragraph 3.2.2;
- 4.2.4 granting approval-in-principle (AIP) for RUTF PAs;
- 4.2.5 developing PAs pursuant to paragraph 3.2.3 and recommending approval of such PAs to the MDs;
- 4.2.6 establishing a Steering Committee (SC), when considered necessary, to monitor conduct of a CTE PA and exercising overall supervision over the SC members, if established, a Joint Project Office (JPO), if established, or Project Officers (POs) (if no SC or JPO is established);

- 4.2.7 obtaining DSA approval for Project Security Instructions and Classification Guides for CTE PAs that contain provisions for the generation or exchange of Classified Information;
 - 4.2.8 developing and entering into PETs pursuant to paragraph 3.2.4;
 - 4.2.9 approving familiarization visits pursuant to paragraph 3.2.5;
 - 4.2.10 monitoring Third Party Sales and Transfers authorized in accordance with Section XII (Third Party Sales and Transfers)
 - 4.2.11 approving a Financial Management Procedures Document (FMPD) pursuant to paragraph 5.5, in the absence of an SC; and
 - 4.2.12 forwarding, when necessary, issues to the MDs for resolution.
- 4.3 Each WG established by the MAs under this MOU and within the provisions of the written TOR for the WG, will be responsible for:
- 4.3.1 submitting a proposed TOR to the MAs for approval;
 - 4.3.2 conducting its assigned tasks and providing periodic progress reports to the MAs, including requesting further guidance as necessary; and
 - 4.3.3 submitting final reports to the MAs for submission to the MDs.
- 4.4 If an SC is established under a particular PA, it will be responsible for:
- 4.4.1 providing policy and management direction to the POs during PA execution;
 - 4.4.2 monitoring overall implementation, including technical, cost, and schedule performance against requirements;
 - 4.4.3 approving plans for transfers of Project Equipment or disposal of jointly acquired Project Equipment, in accordance with Section VII;
 - 4.4.4 resolving issues brought forth by the POs;
 - 4.4.5 maintaining oversight of the security aspects of a project, including preparing a Project Security Instruction and a Classification Guide in the event that a CTE PA contains provisions for the generation or exchange of Classified Information;
 - 4.4.6 approving assignment of personnel working on a project at the other Participant's facilities in accordance with the provisions set out in Appendix 1 to Annex B;

4.4.7 establishing and approving the detailed financial procedures of a CTE PA through an FMPD in the event that one Participant contracts on behalf of the other Participant or on behalf of both Participants; and

4.4.8 reporting status and activity of assigned PAs on an annual basis to the MAs and MDs.

4.5 In accordance with the terms of any TEP PA, the POs will have primary responsibility for effective implementation, efficient management and direction of their assigned PA including technical, cost, and schedule performance against requirements. Additionally, the POs will have the responsibilities under paragraph 4.4 if no SC is established for their CTE PA, except that the MAs will be responsible for approving the FMPD and resolving issues brought forth by the POs. The POs will also maintain a list of all PET Equipment transferred by either of the Participants under a TEP PA.

4.6 In accordance with the terms of an approved CTE PA with the provisions set out in Appendix 1 to Annex B of this MOU attached to the approved CTE PA, a Participant may assign Cooperative Project Personnel (CPP) to the JPO, or to the other Participant's facilities to assist in the implementation of an approved PA.

4.7 Special Procedures for RUTF PAs. The following special procedures will apply to RUTF PAs:

4.7.1 The Customer Participant's MA will submit a project proposal to the Performing Participant's MA. The project proposal will briefly describe the test effort requested

4.7.2 The Performing Participant's Test Facility will review the project proposal to determine if it is able and willing to provide the requested test effort.

4.7.3 If the Performing Participant's MA determines that performing the requested test effort is feasible, he or she will notify the Customer Participant's MA of AIP. AIP does not constitute a commitment to perform the test effort, but provides authority for the Participants to proceed with development and approval of the RUTF PA. If AIP will not be granted, the Performing Participant's MA will notify the Customer Participant's MA as soon as possible.

4.7.4 Each Participant's MA will submit a 12-month forecast of proposed tests to the other Participant's MA for AIP in accordance with a mutually determined schedule. Out-of-cycle project proposals may also be submitted for AIP.

4.8 The MAs, SCs, and/or POs will consult or meet as required, but at least annually. The Chairperson for each meeting will be the senior official of the host Participant. During such meetings, all decisions will be made unanimously with each Participant having one vote. In the event that the Participants are unable to reach a timely decision on an issue, each Participant will refer the issue to its higher authority for resolution. In the meantime, approved PAs will

continue to be implemented without interruption under the direction of the SC and/or POs while the issue is being resolved by higher authority.